

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CAPITAL AVIATION, Inc., a Virginia corporation,)	
)	
)	
Plaintiff,)	4:10CV3040
)	
)	
v.)	
)	
ECA PROGRAM, PLC,)	MEMORANDUM AND ORDER
)	
Defendant.)	
)	

This matter is before the court on competing motions to dismiss plaintiff's earlier motion compelling interested party, Robert Kendall, to submit to a debtor's exam. Plaintiff Capital Aviation seeks to have it's previous motion dismissed without prejudice, (filing no. [21](#)), while Kendall seeks to have the motion dismissed with prejudice, (filing no. [23](#)).

Although the parties characterize their motions as "motions to dismiss," what they are actually seeking is a cancellation of the scheduled debtor's exam, which has previously been continued on multiple occasions.¹ Capital Aviation is apparently asking for the exam to be cancelled, but would like to retain the ability to examine Kendall in the future. Kendall would like the examination cancelled forever.

Under the applicable statutory scheme, a debtor's exam may be required "at any time" after entry of judgment against the debtor. [Neb. Rev. Stat. § 25-1565](#). Thus, as long as the judgment remains unsatisfied, Capital Aviation can require a debtor's exam.

¹ The court cannot dismiss Capital Aviation's motion to compel Kendall to submit to a debtor's examination, (filing no. [4](#)), because the court has already granted that motion and ordered the exam, (filing no. [11](#)).

Kendall raises the issue of whether he is subject to a debtor's examination as a representative of defendant ECA Program, PLC. The court need not decide that issue at this time. If Capital Aviation intends to request another debtor's exam, it will have to file a motion to do so. At that time, Kendall may resist the motion and the court will give due consideration to any evidence presented on the matter.

IT IS ORDERED:

- 1) To the extent Capital Aviation's motion to dismiss, (filing no. [21](#)), seeks the cancellation of the debtor's exam of Robert Kendall without prejudice, it is granted. In all other respects it is denied. The debtor's exam is cancelled and subject to reinstatement only upon motion of Capital Aviation.
- 2) Robert Kendall's motion to dismiss with prejudice, (filing no. [22](#)) is denied.

DATED this 3rd day of May, 2011.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge

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